

MINUTES  
COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT

Monday, October 1, 2007

Division One

**A115921 – Tiffany Sumuel et al. v. ADVO, Inc., et al.**

The judgment is affirmed. Margulies, J. We Concur: Stein, Acting P.J., Swager, J.  
(Certified for Publication.)

**A114888 – In re Christie H., a Person Coming Under the Juvenile Court Law.  
Alameda County Social Services Agency v. Christie C.**

The orders are affirmed. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication.)

Division Two

**A117240 – The People v. Jacqueline Michelle Kelly.**

For the foregoing reason, the rulings revoking appellant's probation and imposing sentence are affirmed. Kline, P.J. We Concur: Lambden, J., Richman, J. (Not for Publication.)

**A114965 – Communications Services Center, Inc. v. Paul J. Razura et al.**

For the foregoing reasons, the order granting preliminary injunction is affirmed. Costs on appeal are awarded to respondent. Kline, P.J. We Concur: Lambden, J., Richman, J. (Not for Publication.)

**A16132 – In re the Marriage of Elizabeth and Larry Wax. Elizabeth Wax v. Larry Wax.**

The order appealed from is affirmed. Haerle, J. We Concur: Kline, P.J., Richman, J. (Not for Publication.)

Monday, October 1, 2007 (continued)

Division Three

**A113075 – The People v. Oscar Maurice Pearson.**

The matter is remanded to the trial court with directions to (1) vacate the conviction on count 3; (2) stay the sentence on count 2; and (3) vacate the findings and sentences with respect to the three enhancements imposed pursuant to section 667.5 subdivision (b). In all other respects the judgment is affirmed. Pollak, Acting P.J. We Concur: Siggins, J., Horner, J. \* (Not for Publication.)

Division Five

**A114144 – The People v. Cesar Reyniery Rodriguez.**

The judgment is affirmed. Simons, Acting P.J. We Concur: Gemello, J., Needham, J. (Not for Publication.)

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\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Tuesday, October 2, 2007

Division One

**A116236 – Louis Cavalcanti v. Silver State Helicopter, LLC, et al.**

The order appealed from is affirmed. Margulies, J. We Concur: Marchiano, P.J., Stein, J.  
(Not for Publication.)

Division Two

**A116553 – In re Andrew A., a Person Coming Under the Juvenile Court Law.  
Contra Costa County Children and Family Services Bureau v. Carolyn N.**

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Richman, J. (Not for Publication.)

**A103850 – The People v. Larry John Sprankle.**

The restitutionary order is stricken and the matter is remanded for correction of the restitutionary order in a manner consistent with this opinion. In all other respects, the judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

Wednesday, October 3, 2007

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Stein, Acting Presiding Justice, Swager, Justice , Margulies, Justice, Stephen Umeki, Bailiff and Mary Quilez, Deputy Clerk.

A114589 Monica Gong,

v.

Terry Kwong.

Cause called and argued by Mattaniah Eytan, counsel for appellant and Robert Roth, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

Wednesday, October 3, 2007

The Court convened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, Presiding Justice, Stein, Justice, Margulies, Justice, Vincent Chambers, Bailiff and Mary Quilez, Deputy Clerk.

A113528 Gary Poon,  
v.

Gordon Poon.

Cause called and argued by Gerald Andrew Clausen, counsel for appellant and David Jason deJesus, counsel for respondent. Cause ordered submitted.

A114640 Prime Vest Realty Inc.,  
v.

Siamak Taromi.

Cause called and argued by Joe R. Abramson, counsel for appellant, and by Alfred Dovbish, counsel for respondent. Cause ordered submitted.

A114840 Carol Brumley,  
v.

Cahill Contractors, Inc., et al.

Cause called and argued by Mary Elizabeth Pougiales, counsel for appellant, and by Patricia Conway, and Kimberly Amick, counsel for respondents. Cause ordered submitted.

Court adjourned.

Wednesday, October 3, 2007

Division One

**A116802 – The People v. William Benton LaSalle.**

The judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

**A118526 – Lucia L. v. Sonoma County Superior Court; Sonoma County Human Services Department et al.**

The request for stay is denied, and the petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.) The decision is final in this court immediately. (Rule 8.264(b)(3).) Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

Division Two

**A113198 – The People v. Reginald Jefferies.**

The finding that appellant's juvenile adjudication constitutes a strike is reversed and remanded for further determination in accordance with the views expressed herein. The judgment is otherwise affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

**A115624 – Tommie Sparks et al. v. Keenan Properties, Inc.**

The judgment is reversed and the matter remanded to the trial court for further proceedings in accordance with the views set forth herein. Plaintiffs are awarded their costs on this appeal. Kline, P.J. I Concur: Lambden, J. (See Concurring and dissenting opinion by Haerle, J.) (Not for Publication.)

**A114681 – Alfredo Nadarisay v. City of Hercules.**

Judge Smith's finding that the termination was correct is supported by substantial evidence in the record, as is her finding of laches. Likewise supported is her conclusion that the doctrine of judicial estoppel does not apply. The judgment denying the petition for writ of mandate is affirmed. Richman, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Wednesday, October 3, 2007 (continued)

Division Three

**A112534 – The People v. James Delphia Williams.**

The judgment is reversed with respect to the imposition of sentence on the burglary conviction and the matter is remanded for resentencing on that conviction. In all other respects, the judgment is affirmed. McGuiness, P.J. We Concur: Pollak, J., Siggins, J. (Not for Publication.)

Division Five

**A106395 – The People v. James E. Elliott.**

The judgment is reversed and the matter is remanded for resentencing. Jones, P.J. We Concur: Gemello, J., Needham, J. (Not for Publication.)

**A116056 – The People v. Juan Manuel Arriola.**

The order denying appellant's motion to dismiss is reversed. The trial court is directed to enter a new order granting appellant's motion. Jones, P.J. We Concur: Gemello, J., Needham, J. (Not for Publication.)

Thursday, October 4, 2007

Division One

**A114722 – The People v. Tommie Sylvester Mason, Jr.**

The judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

**A115219 – The People v. Said Ahmed Hassan.**

The finding that defendant personally used a knife in the commission of the robbery is reversed; the one-year enhancement imposed pursuant to section 12022 is vacated. The clerk of the superior court is directed to modify the abstract of judgment to delete the imposition of the one-year enhancement pursuant to section 12022, subdivision (b)(1); the clerk is to then forward a copy of the amended abstract of judgment to the California Department of Corrections. In all other respects the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

**A107984 – The People v. Hamisi Xavier Spears.**

We reiterate our first memorandum opinion, filed June 27, 2007, in its entirety. (See *City of Long Beach v. Bozek* (1983) 33 Cal.3d 727, 728.) We again affirm the judgment and sentence. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

Division Three

**A112756 – The People v. Cory W. Mosby.**

The judgment is affirmed. Siggins, J. We Concur: McGuiness, P.J., Horner, J.\* (Not for Publication.)

**A116420 – Jacqueline T. et al. v. Alameda County Child Protective Services et al.**

By the Court: Order Modifying Opinion. It is ordered that the opinion filed herein on September 20, 2007 be modified as follows: (See order.) There is no change in the judgment. McGuiness, P.J. (Certified for Publication.)

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\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.



Thursday, October 4, 2007 (continued)

Division Three

**A118455 – Diddo Clark v. Louise Clark, et al.**

**A118811 – Diddo Clark v. Louise Clark, et al.**

By the Court: Louise and Johnson Clark have filed an unopposed motion in the above-captioned appeals seeking an order appointing Louise Clark and Steven Clark as successors in interest for Johnson Clark, who died on April 27, 2007. The motion represents that Steven Clark has been appointed co-trustee of the Clark Family Trust, with Louise Clark remaining as the other co-trustee. Upon due consideration, the motion is construed as a motion for substitution of parties and is granted. The docket shall reflect that Steven Clark, as successor in interest pursuant to Code of Civil Procedure section 377.10 et seq., is substituted in the place of decedent Johnson Clark as an appellant in docket number A118811 and respondent in docket number A118455. (Cal. Rules of Court, rule 8.36(a); Erickson v. Boothe (1949) 90 Cal.App.2d 457, 459 [motion for substitution of parties may be granted after appeal has been taken].)

Upon the court's own motion, in the interests of judicial economy, and good cause appearing, it is ordered that the appeals in docket numbers A118455 and A118811 be consolidated for purposes of briefing, oral argument (if any) and decision. Counsel for all parties are directed to list both appellate case numbers on all future pleadings. Briefing in the consolidated appeals shall proceed as follows: (1) Within 30 days after the record has been filed in both appeals, Diddo Clark shall file an appellant's opening brief; (2) within 30 days after filing of the appellant's opening brief, Louise and Steven Clark shall file a consolidated respondents' brief/cross-appellants' opening brief; (3) within 30 days after filing of the respondents' brief/cross-appellants' opening brief, Diddo Clark shall file an appellant's reply brief/cross-respondent's brief; and (4) within 20 days after filing of the appellant's reply brief/cross-respondent's brief, Louise and Steven Clark shall file a cross-appellants' reply brief. McGuiness, P.J.

Division Four

**A112480 – The People v. Francisco Ortiz.**

The judgment is affirmed. Reardon, J. We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

Friday, October 5, 2007

Division One

**A107665 – The People v. James Lamont Baldwin.**

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

**A117501 – The People v. Michael J. Arlington.**

The judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

Division Two

**A114844 – In re Deandre Q., a Person Coming Under the Juvenile Court Law. The People v. Deandre Q.**

The jurisdictional findings shall be amended to reflect a finding of misdemeanor false imprisonment. The matter is remanded to the juvenile court to recalculate the MTC in accordance with that amendment. In all other aspects, the jurisdictional and dispositional findings are affirmed. Richman, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

**A117054 – In re M.V., a Person Coming Under the Juvenile Court Law. San Mateo County Human Services Agency v. Ruby R.**

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Richman, J. (Not for Publication.)

**A105109 – The People v. Eric Jason Delahoussaye.**

Appellant's convictions and his upper term sentence for count 1 are affirmed. The upper term sentences imposed for the gang enhancements relating to counts 1 and 3, and for count 2, are vacated, and the matter remanded to the trial court for resentencing consistent with this opinion, and with *Sandoval, supra*, 41 Cal.4th 825. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Four

**A112741 – Perini Corporation et al. v. Alagia-Crosby Engineers et al.**

The judgment is affirmed. Rivera, J. We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

Friday, October 5, 2007 (continued)

Division Five

**A112912 – The People v. Joseph Boldt.**

The judgment is affirmed. Needham, J. We Concur: Simons, Acting P.J., Gemello, J.  
(Not for Publication.)

Tuesday, October 9, 2007

Division Two

**A114889 – In re Steven E., a Person Coming Under the Juvenile Court Law. The People v. Steven E.**

The dispositional order is affirmed. Richman, J. We Concur: Kline, P.J., Lambden, J.  
(Not for Publication.)

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR  
Tuesday, October 9, 2007

The Court convened at 9:30 a.m. in its courtroom located at 350 McAllister St., San Francisco, California. Present: Ruvolo, P.J., Sepulveda, J., and Rivera, J.; Channing Hoo, Deputy Clerk; CHP Officer Vince Chambers, Bailiff.

- A116673      Prana Nine Properties  
                 v.  
                 Yue Chang Ye  
Cause called. Paul Utrecht argued for appellant Property. William E. Shapiro argued for respondent. Cause submitted.
- A112499      Ann Moriarty  
                 v.  
                 Mt. Diablo Health Care District  
Cause called. Ralph T. Ferguson argued for litigant Moriarty. Ruel Walker argued for litigant District. Cause submitted.
- At this point, the court reconstituted itself to include Ruvolo, P.J., Reardon, J., and Sepulveda, J.
- A113803      Yolanda Anderson  
                 v.  
                 California Department of Corrections et al.  
Cause called. Elizabeth McDonald argued for appellant Anderson. Karen Donald argued for respondents. Cause submitted.
- A114974      Kathleen Mary Jones  
                 v.  
                 Richard E. Beckman et al.  
Cause called. Scott L. Johnson for appellants Beckman et al. Gary L. Simms argued for respondent. Cause submitted.

Court adjourned until 11:12 a.m.

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR

Tuesday, October 9, 2007

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Reardon, Acting P.J., Sepulveda, J., and Rivera, J.; Channing Hoo, Deputy Clerk; CHP Officer Mindy LaPonte, Bailiff.

A110461 Don Zeppenfeld et al.

v.

Martin Reilley

Causes called. Candace Shirley argued for litigant Reilley. Ira James Harris argued for litigants Zeppendeld et al. Causes submitted.

A113267 Debora Rosen et al.

v.

Regents of the University of California et al.

Cause called. Richard M. Grant argued for appellants Rosen et al. Gary Watt argued for respondents. Cause submitted.

Court adjourned at 2:40 p.m.

Tuesday, October 9, 2007 (continued)

Division Five

**A113201 – The People v. Peter Navarro.**

The judgment is reversed. By separate order filed this date appellant's petition for writ of habeas corpus, A118702, is denied as moot. Jones, P.J. We Concur: Gemello, J., Needham, J.  
(Not for Publication.)

Wednesday, October 10, 2007

Division Two

**A112195 – The People v. Marsell Rayshan Willis.**

The judgment is affirmed. Richman, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)



COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

Wednesday, October 10, 2007

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, and San Francisco, California. Present: McGuiness, P.J., Siggins, J., and Horner, J., pro tem; and B. Robbins, Deputy Clerk.

A116191 Yee Keung Siu,  
v.  
Pius Lee.

Cause called and argued by Joseph M. Breall, counsel for appellant, and Paul Wartelle, counsel for respondent. Cause ordered submitted.

A115130 William F. Garlock,  
v.  
Charles M. Sprincin, et al.

Cause called and argued by George P. Eshoo, counsel for appellant, and Nancy E. Perham, counsel for respondent. Cause ordered submitted.

A113361 Carl Navarra, et al.,  
v.  
City of Oakland.

Cause called and argued by Christopher A. Kee, counsel for appellant, and Andrew N. Chang, counsel for respondents. Cause ordered submitted.

A114458 The People,  
A116867 v.

Jimi Axus Suma.  
In re Jimi Axus Suma.

Cause called and argued by Marylou E. Hillberg, counsel for appellant, and Bridget Billeter, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Presiding Justice McGuiness left the bench and Justice Siggins presided over the last case on calendar. Justice Siggins announced that the panel for the last case consisted of himself, Justice Pollak and Justice Horner; however, Justice Pollak was away from the court and would listen to the recording of oral argument. Counsel agreed to proceed without Justice Pollak.

A115607 The People,  
v.  
Hector Rodriguez.

Cause called and argued by John J. Jordan, counsel for appellant, and Donna M.

Provenzano, counsel for respondent. Cause ordered submitted.

Court Adjourned.

Wednesday, October 10, 2007 (continued)

Division Four

**A118407 – Marie F.-A. v. The Superior Court of San Mateo County; San Mateo County Human Services Agency, R.P.I.**

The petition for writ of mandate is denied on the merits. (' 366.26, subd. (1); Cal. Rules of Court, rule 8.452(i); *In re Julie S.* (1996) 48 Cal.App.4th 988, 990-991.) The request for a stay of the October 16, 2007 hearing is denied. Our decision is final immediately. (Cal. Rules of Court, rule 8.264(b)(3).) Reardon, J. We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

**A113242 – Conservatorship of the Person and Estate of Roy Whitley. North Bay Regional Center v. Virginia Maldonado.**

We reverse the superior court's ruling and remand with instructions for the SDC and NBRC to proceed with a new IPP planning meeting, with Maldonado present, as required by the Lanterman Act. (§§ 4512, subd. (j); 4646.) If the IDT still recommends community placement, and Maldonado again disagrees with the community placement decision reached through a procedurally proper IPP process, she should be accorded her legislatively granted right of review through the administrative fair hearing process, and that afforded by the administrative mandamus review procedure. Ruvolo, P.J. We Concur: Reardon, J., Rivera, J. (Certified for Publication.)

Thursday, October 11, 2007

Division Two

**A113620 – The People v. Phong Khanh Nguyen.**

The judgment of conviction is affirmed. Haerle, Acting P.J. We Concur: Lambden, J., Richman, J. (Not for Publication.)

**A117560 – The People v. Megan Doreen Laramore.**

The judgment is affirmed. Richman, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

**A111128 (consolidated with A112104) – Intagio Trading Network., Inc. v. Alton Perkins et al.**

We affirm the postjudgment order of May 6, 2005 denying appellants' section 473 request for relief from default (appeal No. A111128). We vacate the order of November 8, 2005, denying appellants' motion to vacate and set aside a void judgment, as it was entered in excess of the trial court's jurisdiction and we dismiss the appeal from that order (No. A112104). Plaintiff is awarded its costs in connection with these appeals. Kline, P.J. We Concur: Haerle, J., Richman, J. (Not for Publication.)

Division Three

**A116191 – Yee Keung Siu v. Pius Lee et al.**

The trial court's order granting in part and denying in part defendant-appellant Lee's special motion to strike is affirmed with respect to striking the First, Second, Third and Fourth Causes of Action, and is affirmed with respect to denying the special motion to strike the Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Causes of Action.

The trial court's order is reversed with respect to the Fifth and Twelfth Causes of Action. The trial court erred by failing to grant Lee's special motion to strike with respect to the Fifth Cause of Action (Invasion of Privacy - False Light) and Twelfth Cause of Action (Injunctive Relief). These causes of action should be stricken from the FAC.

The case is remanded for further proceedings not inconsistent with this opinion. Each party will bear its own costs on appeal. Horner, J.\* We Concur: McGuinness, P.J., Siggins, J. (Not for Publication.)

**A114561 – The People v. Eric Garrison.**

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\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

The judgment is affirmed. Siggins, J. We Concur: McGuiness, P.J., Horner, J.\* (Not for Publication.)

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\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Thursday, October 11, 2007 (continued)

Division Three

**A116095 – In re D.H., a Person Coming Under the Juvenile Court Law. The People v. D.H.**

The juvenile court's order is reversed as to count I. In all other respects, we affirm. Siggins, J. We Concur: McGuinness, P.J., Horner, J. \* (Not for Publication.)

Division Four

**A111628 – The People v. John Leroy Clemons.**

The abstract of judgment is to be amended to reflect a \$10 reduction in the penalty assessment imposed in connection with the fee under Vehicle Code section 14601.1. In all other respects, the judgment is affirmed. Ruvolo, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

**A111366 – The People v. Leron Leon Morris.**

The judgment is affirmed. Ruvolo, P.J. We Concur: Reardon, J., Rivera, J. (Not for Publication.)

Division Five

**A117057 – In re Gerardo A., a Person Coming Under the Juvenile Court Law. Contra Costa County Department of Children & Family Services v. Ayani D.**

The judgment is affirmed. Needham, J. We Concur: Simons, Acting P.J., Gemello, J. (Not for Publication.)

**A111214 – Fidelity and Guaranty Insurance Company v. German Motors Corporation dba BMW of San Francisco, a California corporation, et al.**

The judgment is affirmed. Gemello, J. We Concur: Jones, P.J., Needham, J. (Not for Publication.)

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\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Friday, October 12, 2007

Division Five

**A112644 – The People v. Corey Elder.**

The trial court judgment is reversed to the extent it imposes two five-year sentence enhancements under section 667, subdivision (a)(1) for the two Solano County prior convictions and to the extent it imposes four one-year sentence enhancements pursuant to section 667.5 subdivision (b). In all other respects, the judgment is affirmed. The cause is remanded to the trial court for resentencing or, at the prosecution's election, redetermination of whether the two Solano County priors arose from charges brought separately. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

**A118778 – Darla R. v. The Superior Court of Contra Costa County; Contra Costa County Bureau of Children and Family Services, R.P.I.**

The petition is denied on the merits. (Cal. Const., art. VI, § 14; Cal. Rules of Court, rule 8.452; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) Because the .26 hearing is set for November 8, 2007, our decision is immediately final as to this court. (Cal. Rules of Court, rule 8.264(b).) Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

**A114194 – The People v. David E. Pope.**

The judgment is affirmed. Needham, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

**A117409 – The People v. Susan Rosalyn Caporale.**

The judgment is affirmed. Needham, J. We Concur: Simons, Acting P.J., Gemello, J. (Not for Publication.)

## MINUTES

### CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Monday, October 15, 2007

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P.J., Lambden, J., Richman, J., Sergeant Sherry and S. Wheeler, Deputy Clerk.

A107457 &     APS West Coast, Inc.,  
A109115     v.  
              Sonald Mann, et al.  
Cause called and argued by Joseph H. Wood, counsel for appellants, and Mark Everett McKeen, counsel for respondent. Cause ordered submitted.

At this point of the proceedings, Justice Richman left the bench and Justice Haerle joined the bench for the remainder of the calendar.

A116633     Barry Bronk, et al.  
              v.  
              Newport Insurance Company.  
Cause called and argued by Kimberley Fanady, counsel for appellants, and Rosemary Springer, counsel for respondent. Cause ordered submitted.

A110850 &     The People,  
A118229     v.  
              Maunice Sandefur, et al.;  
              In re Michael J. Crummer on Habeas Corpus.  
Cause called and argued by David Suyndelson, counsel for appellant Crummer, David L. Bernstein, via teleconference, counsel for appellant Sandefur, and Catherine Rivlin, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.



MINUTES

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION TWO

Monday, October 15, 2007

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco, California. Present: Haerle, Acting P.J., Lambden, J., Richman, J., Officer Umeki and S. Wheeler, Deputy Clerk.

- A115732      The People,  
                 v.  
                 Thomas Bonnetta et al.  
Cause called and argued by Dana Lynn Filkowski-Calvert, Deputy District Attorney, counsel for appellant, Robert Stevens Condie, counsel for respondent Bonnetta, and Violet Elizabeth Grayson, via teleconference, counsel for respondent Wilen. Cause ordered submitted.
- A113796      The People,  
                 v.  
                 Eugene Snow.  
Cause called and argued by Ozro William Childs, counsel for appellant, and Moona Nandi, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A116425      Rita L. Parnala,  
                 v.  
                 Plycon Van Lines Inc.  
Cause called and argued by Jonathan Berres Cole, counsel for appellant, and Eugene Taylor Franklin, counsel for respondent. Cause ordered submitted.
- A117051      Cheryl Murphy  
                 v.  
                 Roger Burch, et al.  
Cause called and argued by Thomas Edward Owen, counsel for appellants, and Jared G. Carter, counsel for respondent. Cause ordered submitted.

**COURT ADJOURNED.**

Monday, October 15, 2007

Division Four

**A117831 – Tatiana Sky v. Laura Roboubiat.**

The judgment is affirmed. Ruvolo, P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

**A111032 – The People v. Dario Drakes.**

The judgment is affirmed. Ruvolo, P.J. We Concur: Reardon, J., Rivera, J. (Not for Publication.)

Division Five

**A116699 – In re Mehkayla A., a Person Coming Under the Juvenile Court Law. Humboldt County Department of Health and Human Services v. Karrie A.**

The order is affirmed. Needham, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Tuesday, October 16, 2007

Division One

**A113027/A113369 – Genaro Garcia et al. v. Duro Dyne Corporation.**

The judgment shall be amended to include a reservation of jurisdiction to award further offset credits to Duro Dyne in the event any portion of the Thorpe or Owens settlements is paid, and to reflect the correct setoff figure for the economic damages award. In all other respects, the judgment is affirmed. The parties shall bear their own costs on appeal. Stein, J. We Concur: Marchiano, P.J., Margulies, J. (Certified for Publication.)

**A116081 – Mui Ung v. Henry Koehler.**

The order of the trial court is affirmed. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

**A114031 – The People v. Barry Creath Whitley.**

The order appealed from is affirmed. Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

**A118873 – Edward R. v. Superior Court of Solano County; Solano County Health and Social Services Department et al, R.P.I.**

The petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.) The decision is final in this court immediately. (Rule 8.264(b)(3).) Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Division Two

**A113351 – Kamlesh Banga v. Countrywide Home Loans et al.**

The judgment is affirmed. Haerle, Acting P.J. We Concur: Lambden, J., Richman, J. (Not for Publication.)

**A116890 – The People v. Thomas W. Haner.**

The order appealed from is affirmed. Haerle, Acting P.J. We Concur: Lambden, J., Richman, J. (Not for Publication.)

Tuesday, October 16, 2007 (continued)

Division Three

**A112477 – The People v. Chris Thomas Gilbreth.**

By the Court: The opinion in the above-entitled matter filed on September 19, 2007, was not certified for publication in the Official Reports. For good cause, the request for partial publication is granted.

Pursuant to California Rules of Court, rules 8.1105 and 8.1110, the opinion in the above-entitled matter is certified for publication with the exception of parts B and C of the Discussion. Pollak, Acting P.J. (Certified for Publication.)

**A117657 – The People v. Michael Masliakoff.**

The judgment is affirmed. Horner, J.\* We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

**A116838 – The People v. Bernard Warren.**

The judgment is affirmed. Horner, J.\* We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

Division Four

**A114974 – Kathleen Mary Jones v. Richard E. Beckman et al.**

The trial court's order denying appellant's motion to strike is reversed. Jones to bear costs on appeal. Reardon, J. We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

Division Five

**A114796 – The People v. Joseph Eugene Littlemoon.**

The judgment is affirmed. Gemello, J. We Concur: Simons, Acting P.J., Needham, J. (Not for Publication.)

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\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Wednesday, October 17, 2007

Division One

**A11442 – Lisa Murphy v. Check ‘N Go of California, Inc.**

The order denying the motion to compel arbitration is affirmed. Marchiano, P.J. We Concur: Stein, J., Margulies, J. (Certified for Publication.)

**A113937 – Dianne Urhausen v. Longs Drugs Stores California et al.**

By the Court: The petition for rehearing is denied. Stein, Acting P.J.

**A114299 – The People v. David Gilford.**

By the Court: The petition for rehearing is denied. Stein, Acting P.J.

**A114640 – Prime Vest Realty, Inc. v. Siamak Taromi, Jeff Kaiser.**

The trial court is directed to enter an amended judgment reducing Prime Vest’s recovery against Taromi on the principal of the promissory note to \$150,000 and making appropriate adjustments, if any are necessary, to the calculation of interest due on the note. The judgment is otherwise affirmed. Parties to bear their own costs. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

Division Two

**A118582 – Frank G. v. The Superior Court of Alameda County; Alameda County Social Services Agency, R.P.I.**

The petition is dismissed. Given the imminency of the hearing set for October 25, our decision is final immediately (Cal. Rules of Court, rule 8.260(b)(3)). Lambden, J. We Concur: Kline, P.J., Richman, J. (Not for Publication.)

**A118583 – Jennifer A. v. The Superior Court of Alameda County; Alameda County Social Services Agency, R.P.I.**

The petition is denied on the merits. (Cal. Const., art. VI, section 14; *Kowis v. Howard* (1992) 3 Cal.4th 888 [barring subsequent challenges by appeal]; Welf. & Inst. Code, section 366.26, subd. (1)(1).) Given the imminency of the hearing set for October 25, 2007, our decision is final as to this court immediately (Cal. Rules of Court, rule 8.260(b)(3)). Lambden, J. We Concur: Kline, P.J., Richman, J. (Not for Publication.)

Wednesday, October 17, 2007 (continued)

Division Two

**A115348 – The People v. Daniel Manuel Pautenis.**

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Richman, J. (Not for Publication.)

**A114202 – In re A.J. et al., Persons Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Esperanza F.**

The jurisdiction and disposition orders challenged herein are affirmed, and the matter is remanded to the juvenile court with directions to comply with inquiry and notice provisions of the ICWA, if it has not already done so. After proper notice under the ICWA, if it is determined that either A.J. or K.B. is an Indian child and the ICWA applies to these proceedings, Esperanza is entitled to petition the juvenile court to invalidate orders that violated the ICWA. (See 25 U.S.C. § 1914; rule 5.664(n)(1).) Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

**A114705 – Suzanne Guyette et al. v. Viacom, Inc. et al.**

Almost 30 years ago we confirmed that the management of a class action is " 'a difficult legal and administrative task.' " (*Dean Witter Reynolds, Inc. v. Superior Court* (1989) 211 Cal.App.3d 758, 773). From beginning to end, Judge Sabraw managed this class action in exemplary fashion and, we conclude, he reasonably and properly applied the principles of contract interpretation to the situation here, and arrived at a considered-and most equitable-disposition of the residue of the settlement fund. The order appealed from is affirmed. Richman, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

**A105109 – The People v. Eric Jason Delahoussaye.**

By the Court: Order Modifying Opinion. Upon review of appellant's application for order modifying opinion, filed on October 15, 2007, we hereby order that the unpublished opinion filed herein on October 5, 2007, be modified as follows: (See order.) There is no change in the judgment. Kline, P.J. (Not for Publication.)

**A115130 – William F. Garlock v. Charles M. Sprincin et al.**

The judgment is affirmed. Siggins, J. We Concur: McGuiness, P.J., Horner, J.\* (Not for Publication.)

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\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Wednesday, October 17, 2007 (continued)

Division Four

**A113803 – Yolanda Anderson v. State of California et al.**

The judgment is reversed, and the case is remanded for further proceedings consistent with this opinion. Appellant shall recover her costs on appeal. Ruvolo, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

**A117834 – In re W.F. III., a Person Coming Under the Juvenile Court Law. The People v. W.F. III.**

The judgment is affirmed. Ruvolo, P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

**A116979 – The People v. Estuardo Rodriguez Vasquez.**

**A118022 – In re Estuardo Rodriguez Vasquez, on Habeas Corpus.**

The judgment is affirmed. The petition for writ of habeas corpus is denied. Ruvolo, P.J. We Concur: Reardon, J., Rivera, J. (Not for Publication.)

Division Five

**A115789 – Carol Mardeusz v. Leo Magers.**

The judgment is affirmed. Gemello, J. We Concur: Jones, P.J., Needham, J. (Not for Publication.)

**MINUTES**  
COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FIVE

Wednesday, October 17, 2007

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J., Simons, J., Gemello, J., Needham, Jr., J., and E. Cyman, Deputy Clerk.

A116149     Turner Construction Company,  
A116417     v.  
              Custom Spray System.  
Cause called and argued by Raymond M. Buddie, counsel for appellant, and by Colette F. Stone, counsel for respondent. Cause ordered submitted.

At this point in the proceedings Justice Simons left the bench and Justice Gemello entered.

A116153     Spintetta,  
              v.  
              Disney.  
Cause called and argued by James Disney, appellant in pro per, and by Joseph M. Quinn, counsel for respondent. Cause ordered submitted.

At this point in the proceedings Justice Jones left the bench and Justice Simons entered.

A111391     Clark,  
              v.  
              Westrec Marina Management, Inc., et al.  
Cause called and argued by Alan Chales Dell' Ario , counsel for appellant, and by Michael McCarthy, counsel for respondents. Cause ordered submitted.

A111526     The People,  
              v.  
              Fonseca.  
Cause called and argued by Steve Defilippis, counsel for appellant, and by Kelly Croxton, counsel for respondent. Cause ordered submitted.

A116914     Gately,  
              v.  
              Cloverdale Unified School District.  
Cause called and argued by Scott A. Lewis, counsel for appellant, and by Nancy Lu Klein, counsel for respondent. Cause ordered submitted.



A115056     Jolley,  
                 v.  
                 Sutter Coast Hospital et al.,  
                 Ian Zimmerman.  
                 Cause called and argued by Kenneth D. Robin, counsel for appellant, and by Sandra  
                 McIntyre, counsel for respondent. Cause ordered submitted.

Court adjourned at 11:16 a.m.

Thursday, October 18, 2007

Division One

**A112560/A113771 – Jessica Grinberg v. Van Phillips.**

The orders are affirmed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

**A114878 – The People v. Antonio Medina, Jr.**

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

**A115877 – In re Dimaryea M., a Person Coming Under the Juvenile Court Law. The People v. Dimaryea M.**

Accordingly, the judgment of the juvenile court that sustained the findings that defendant committed two counts of resisting or obstructing a peace officer in violation of Penal Code section 148, subdivision (a) is reversed for lack of supporting evidence. Swager, J. We concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

**A117604 – The People v. James Edward Kelly.**

Accordingly, the judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication.)

**A114960/A115787 – Lynn B. Jacobson v. Town of Portola Valley; Tom Lodato et al., R.P.I.**

The orders are affirmed. Jacobson and the Town shall bear their own costs on appeal. Lodato and SCA shall recover costs on appeal. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication.)

Division Two

**A116520 – The People v. Temple Lee Stuart.**

The judgment is affirmed. Accordingly, defendant's request that this court "further order [defendant] released pending its review of the trial court's ultimate determination" is denied. Lambden, J. We Concur: Haerle, Acting P.J., Richman, J. (Certified for Publication.)

Thursday, October 18, 2007 (continued)

Division Two

**A113864 – Shahiram Sharareh et al., as successors in interest to the Estate of Sina Sharareh, Deceased, v. Workers' Compensation Board, City of Lafayette et al.**

The Board's order is hereby annulled. The case is remanded to the Board with directions to return the matter to the arbitrator for the preparation of a summary of evidence, and to thereafter prepare a new order consistent with this opinion. Kline, P.J. We Concur: Haerle, J., Richman, J. (Certified for Partial Publication.)

**A117500 – The People v. Marva Dycus.**

Our independent review having found no arguable issues that require briefing, the restitution order is affirmed. Richman, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Three

**A115607 – The People v. Hector Rodriguez.**

The conviction for deterring or preventing an office is reversed. The judgment is otherwise affirmed. Siggins, J. We Concur: Pollak, Acting P.J., Horner, J.\* (Not for Publication.)

Division Four

**A118312 – The People v. Jason Jamal Payne.**

We affirm. Ruvolo, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

**A113764 – The People v. Anna Urbina.**

The judgment is affirmed. The trial court is directed to determine whether an amended abstract of judgment needs to be prepared, and if so, to prepare one and forward a certified copy to the Department of Corrections and Rehabilitation. Ruvolo, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Division Five

**A107671 – The People v. Joseph Edward Hughes.**

The judgment is affirmed. Reardon, J.\* We Concur: Simons, Acting P.J., Gemello, J. (Not for Publication.)

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\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**MINUTES**  
COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FIVE

Thursday, October 18, 2007

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J., Simons, J., Gemello, J., Needham, Jr., J., and E. Cyman, Deputy Clerk.

- A116242     Vroegh et al.,  
                 v.  
                 Eastman Kodak Company et al.,  
                 David Klausner et al.  
                 Cause called and argued by Charles D. Chalmers, counsel for appellants, Ben Nutley,  
                 counsel for appellant Gordon, and by Adam Gutride, counsel for respondents. Cause  
                 ordered submitted.
- A114563     The People,  
                 v.  
                 Zinlu.  
                 Cause called and argued by Rodney Richard Jones, counsel for appellant, and by David H.  
                 Rose, counsel for respondent. Cause ordered submitted.
- A114602     The People,  
                 v.  
                 Garner.  
                 Cause called and argued by Jeffrey W. Kobrick, counsel for appellant, and by Christopher J.  
                 Wei, counsel for respondents. Cause ordered submitted.

Court adjourned at 10:24 a.m.

Friday, October 19, 2007

Division One

**A115807 – The People v. Michael J. Hoisington.**

The judgment is affirmed. The abstract of judgment is modified to strike the \$600 restitution fine, to reduce the parole revocation fine to \$200, to reduce the laboratory fee to \$170 and to reduce the drug program fee to \$510. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

Division Two

**A112548 – In re the Marriage of Kari B. and Michael Evanson. Michael Evanson v. Kari Barstow-Evanson.**

The August 29, 2005, order is affirmed insofar as it vacates and sets aside the previous July 15, 2005 order. The August 29, 2005, order is reversed insofar as it purports to modify the March 16, 2005, order in respects other than that of correcting the birth dates of the children of the parties with other partners. The matter is remanded to the trial court for further proceedings consistent with the views set forth herein. In the interests of justice, each party shall bear his or her own costs in connection with this appeal. Kline, P.J. We Concur: Haerle, J., Richman, J. (Not for Publication.)

**A115419 – The People v. Waldo Sandoval.**

The judgment of conviction is affirmed. Haerle, Acting P.J. We Concur: Lambden, J., Richman, J. (Not for Publication.)

Division Three

**A106916 – The People v. Leonard C. Jones.**

The judgment is affirmed. Siggins, J. We Concur: Pollak, Acting P.J., Horner, J.\* (Not for Publication.)

**A104380 – The People v. Randy Lee Hughes.**

The judgment of the trial court is affirmed. Siggins, J. We concur: Pollak, Acting P.J., Horner, J.\* (Not for Publication.)

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\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Friday, October 19, 2007 (continued)

Division Four

**A112480 – The People v. Francisco Ortiz.**

By the Court: The petition for rehearing is denied. Reardon, Acting P.J.

**A113622 – The People v. Mehmet Sanduvac.**

The judgment is affirmed. Reardon, J. We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

Division Five

**A116313 – The People v. Jason Elliot Butcher.**

The judgment is affirmed. Gemello, J. We Concur: Simons, Acting P.J., Needham, J. (Not for Publication.)

**A114373/A116154 – Bobby Thompson, individually and dba Baywood Service Center v. American Tow Service.**

The judgment is affirmed. Plaintiff is awarded its attorney fees and costs on appeal. The matter is remanded to the trial court with directions to determine a reasonable award for attorney fees on appeal. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

**A113291 – The People v. Michael L. Roberts.**

For the reasons stated, the judgment is reversed and the cause is remanded with directions to the trial court to conduct an in camera hearing on appellant's discovery motion consistent with this opinion. If the hearing reveals no discoverable information in the officers' personnel records that would lead to admissible evidence helpful to Roberts' defense, the trial court shall reinstate the original judgment and sentence which shall stand affirmed. If the in camera hearing reveals discoverable information that could lead to admissible evidence helpful to Roberts in defense of the charge, the trial court shall grant the requested discovery, allow Roberts an opportunity to demonstrate prejudice, and order a new trial if prejudice is demonstrated. If Roberts does not demonstrate prejudice, the trial court shall reinstate the original judgment and sentence which shall stand affirmed. Needham, J. We Concur: Simons, Acting P.J., Gemello, J. (Not for Publication.)

**A115056 – Greg Jolley v. Sutter Coast Hospital et al, Ian Zimmerman.**

The trial court order is affirmed. Gemello, J. We Concur: Simons, Acting P.J., Needham, J. (Not for Publication.)

**A116013 – Cheryl D. Marshall Williams v. Kevin B. Williams.**

The appeal is dismissed. Each party to bear its own costs on appeal. Needham, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

Monday, October 22, 2007

Division One

**A113097 – The People v. David M. Johnson.**

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

**A115664 – The People v. Anthony Burke.**

After a full review of the record, we find no arguable issues and, accordingly, affirm the judgment. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

**A114840 – Carol Brumley et al. v. FDCC California, Inc, et al.**

The trial court's judgment is reversed in part. Although Brumley's original claims, now asserted as survivorship claims, are concededly barred by section 583.310, plaintiffs' wrongful death claims and Mrs. Brumley's loss of consortium claim are not barred. The matter is remanded for further proceedings consistent with this decision. Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Certified for Publication.)

Division Two

**A115626 – Yuka Nakamura v. John Marshall Parker.**

The order is reversed and the matter is remanded to the trial court for action consistent with this opinion. Kline, P.J. We Concur: Haerle, J., Richman, J. (Certified for Publication.)

Division Three

**A116262 – Regina Birkner et al. v. Kwai Ho Lam.**

By the Court: Order Certifying Opinion for Publication. Horner, Acting P.J.\* (Certified for Publication.)

**A114458 – The People v. Jimi Axus Suma.**

**A116867 – In re Jimi Axus Suma, on Habeas Corpus.**

The judgment is affirmed. The petition for writ of habeas corpus is denied. McGuinness, P.J. We Concur: Siggins, J., Horner, J.\* (Not for Publication.)

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\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Tuesday, October 23, 2007

Division One

**A117005 – The People v. Stephen James Anderson.**

The judgment is reversed and the case remanded to the superior court with directions to vacate the no contest plea if defendant makes an appropriate motion within 30 days after the remittitur is issued. In that event, the superior court is also directed to reinstate the original charges contained in the felony complaint, if the prosecution so moves, and proceed to trial or make other appropriate dispositions. If no motion to vacate the plea is filed by defendant within the prescribed 30-day time limit, the trial court is directed to reinstate the original judgment. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication.)

Division Three

**A118319 – The People v. Tiffany Lorraine Barnfield.**

The judgment is affirmed. Siggins, J. We Concur: Pollak, Acting P.J., Horner, J.\* (Not for Publication.)

Division Five

**A116153 – Peter L. Spinetta v. James H. Disney.**

The order is affirmed. Needham, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

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\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.



Wednesday, October 24, 2007

Division One

**A114305 – Everest Investors 12 et al. v. Prometheus Development Co., Inc., et al.**

By the Court: The petition for rehearing is denied. Stein, Acting P.J.

**A115691 – Estate of Harold D. Thrweatt, Deceased. Eugene L. Rose, as Executor, etc. v. Geneva McGee, Yvette R. Harvison et al.**

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

**A115546 – The People v. Juan Viera.**

By the Court: Good cause having been shown to recall the remittitur and the remittitur having been recalled on October 15, 2007, the opinion filed on July 31, 2007, is deemed filed as of October 15, 2007, to allow appellant to file a petition for review in the California Supreme Court. Marchiano, P.J.

COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

Wednesday, October 24, 2007

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, and San Francisco, California. Present: Pollak, J., Siggins, J., and Horner, J., pro tem and P. Acosta, Deputy Clerk.

A115472 J.R. Marketing et al.,  
v.  
Hartford Casualty Insurance Co.  
Cause called and argued by Dean Herman, counsel for appellant, and Mark Goodman, counsel for respondent. Cause ordered submitted.

A115846 J.R. Marketing et al.,  
v.  
Hartford Casualty Insurance Co.  
Cause called and argued by Dean Herman, counsel for appellant, and Mark Goodman, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Presiding Justice McGuiness joined the bench. Justice Siggins left the bench.

A114692 JPI Westcoast Construction, et al.,  
v.  
Great American Insurance Co. et al.  
Cause called and argued by Gregory Scher, counsel for appellant, Peter Whalen and Christine Garrison, counsel for respondents. Cause ordered submitted.

A107349 County of Sonoma et al.,  
v.  
Thomas Pleasants McCrea III, et al.  
Cause called and argued by William Adams, counsel for appellant, and Daphne Beletsis, counsel for respondent. Cause ordered submitted.

A115988 Luis M, a Minor, etc., et al.,  
v.  
Hayward Unified School District.  
Cause called and argued by Stephen Rhoads, counsel for appellant, and Raymond Bangle III, counsel for respondent. Cause ordered submitted.  
At this point in the proceedings, Justice Siggins joined the bench. and Horner, J., pro tem left the bench.

A116299 Gene Chan et al.,

v.

United Screeners Assoc.

Cause called and argued by Stephen Sommers, counsel for appellant, and Anne Iwa Yen, counsel for respondent. Cause ordered submitted.

A117288 In Re CURTIS Lee on Habeas  
Corpus.

Cause called and argued by Michael Satris, counsel for appellant, and Amanda Murray, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Horner, J., pro tem joined the bench. and Justice Pollak; left the bench.

A113837 The People,

v.

Shakema Yvette Brooks.

Cause called and argued by Robert Gehring, counsel for appellant, and Arthur Beever, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Justice Pollak joined the bench and Presiding Justice McGuiness left the bench.

A112276 C. Anthony Hunt,

v.

The Regents of the University of California.

Cause called and argued by Andrew Thomas Sinclair, counsel for appellant, and Arthur Beever and Christopher Patti counsel for respondent. Cause ordered submitted.

**COURT ADJOURNED**

Wednesday, October 24, 2007 (continued)

Division Four

**A113905 – Joe D. Turner v. American Arbitration Association et al.**

The appeal is dismissed. Rivera, J. We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

**A112884 – Joe D. Turner v. American Arbitration Association et al.**

The appeal is dismissed. Rivera, J. We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

Thursday, October 25, 2007

Division Two

**A114069 – Silvy Puthukkeruil v. Brian M. Allen.**

**A114070/A114071/A114072 – Scios, Inc., et al. v. Brian M. Allen.**

The orders granting injunctions pursuant to section 526.6 and 527.8 are affirmed. Respondents shall recover their costs in connection with these appeals. Kline, P.J. We Concur: Haerle, J., Richman, J. (Not for Publication.)

**A116871 – In re Derrick S., a Person Coming Under the Juvenile Court Law. Contra Costa County Children and Family Services v. Derrick S.**

The order is reversed. Richman, J. We Concur: Kline, P.J., Lambden, J. (Certified for Publication.)

**A111697 – The People v. Carlos Hernandez.**

The restitution order must be reversed and the matter remanded to allow for reconsideration of the issue of victim restitution. In all other respects, the judgment of conviction is affirmed. Richman, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Three

**A118894 – Kimberlee S. v. The Superior Court of Alameda County; Alameda County Social Services Agency, R.P.I.**

The petition for extraordinary relief is denied. This opinion shall become final immediately upon filing. (Cal. Rules of Court, rule 8.264(b)(3).) Pollak, Acting P.J. We Concur: Siggins, J., Horner, J.\* (Not for Publication.)

**A117288 – In re Curtis Lee, on Habeas Corpus.**

The petition for writ of habeas corpus is granted. The decision of the Governor to reverse the Board's 2006 finding that petitioner is suitable for parole is vacated. This case is remanded to the Board to allow the Board to convene, as soon as possible, a new parole consideration hearing for petitioner in accordance with this opinion. Siggins, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

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\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Thursday, October 25, 2007 (continued)

Division Four

**A115736 – The People v. Frederick A. Stewart.**

The judgment is affirmed. Sepulveda, J. We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

**A116662 – In re D.L., a Person Coming Under the Juvenile Court Law. San Mateo County Human Services Agency v. L.L.**

The juvenile court's orders are affirmed. Sepulveda, J. We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

Friday, October 26, 2007

Division One

**A115871 - The People v. Craig Griffin.**

The judgment is affirmed. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

**A116619 – The People v. Manuel Pedraza Mendoza.**

The order granting probation is affirmed. Marchiano, P.J. We Concur: Stein, J., Margulies, J. (Not for Publication.)

**A117364 – The People v. Matthew Gabriel Susmilch.**

The judgment and sentence are affirmed. Marchiano, P.J. We Concur: Stein, J., Margulies, J. (Not for Publication.)

**A112663 – The People v. Sonya Deniece Rankin.**

The judgment and sentence are affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

**A117302 – The People v. David Michael Arreola.**

The judgment and sentence are affirmed. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

Division Three

**A114692 – JPI Westcoast Construction, L.P. v. RJS & Associates, Inc., Great American Insurance Company, Transcontinental Insurance Company.**

The judgment is affirmed. Respondents Great American and RJS are entitled to their costs on appeal. Horner, J.\* We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

**A107349 – County of Sonoma et al. v. Thomas Pleasants McCrea III et al.**

The dismissal of the action and the denial of the motion to vacate are reversed. The matter is remanded to the superior court for a reconsideration of defendants' demurrer and motion to dismiss for nonjoinder of a party. Plaintiffs are awarded costs. Horner, J.\* We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

**A113361 – Carl J. Navarra, et al. v. City of Oakland.**

The judgment is affirmed. McGuiness, P.J. We Concur: Siggins, J., Horner, J.\* (Not for Publication.)

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\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

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Friday, October 26, 2007 (continued)

Division Three

**A115988 – Luis M., a Minor, etc. v. Hayward Unified School District.**

The judgment against plaintiff Luis M. is reversed, and the matter is remanded for further proceedings on his negligent cause of action. Plaintiff shall recover his costs on appeal. Pollak, J. We Concur: McGuiness, P.J., Horner, J.\*

Division Five

**A114119/A115000 – Bernice Burns Jackson et al. v. Patricia Burns Bailey, as Trustee, etc.**

The judgment is affirmed. Respondents shall recover their costs on appeal. Simons, Acting P.J. We Concur: Gemello, J., Needham, J. (Not for Publication.)

**A116914 – Kim Gately v. Cloverdale Unified School District.**

The judgment (order denying petition for writ of mandate) is affirmed. Costs on appeal are awarded to respondent. Needham, J. We Concur: Simons, Acting P.J., Gemello, J. (Certified for Publication.)

**A113883 – In re the Marriage of Christina Sagonowsky and Curtis Kekoa, Jr. Christina Sagonowsky v. Curtis Kekoa, Jr.**

The order of January 25, 2006, is affirmed. Jones, P.J. We Concur: Simons, J., Needham, J. (Not for Publication.)

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\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.



Monday, October 29, 2007

Division One

**A115359 – Denis Sandell Ott v. Kathleen McCasey.**

The judgment of dismissal is affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

**A116550 – In re Nicholas G., a Person Coming Under the Juvenile Court Law. The People v. Nicholas G.**

The order is affirmed. Stein, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Division Two

**A117012 – The People v. Donald Lee McMullen.**

The judgment of the trial court is affirmed. The minute order and abstract of judgment shall be amended by the clerk of the trial court to correctly reflect that appellant admitted only two prior convictions within the ambit of section 667.5, and that the sentence imposed by the trial court on the Vehicle Code section 10851, subdivision (a) conviction was the statutorily designated midterm of three years. Lambden, J. We Concur: Kline, P.J., Richman, J. (Not for Publication.)

**A117046 – In re L.H. et al., Persons Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Philice M.**

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Richman, J. (Not for Publication.)

Division Three

**A112276 – C. Anthony Hunt v. The Regents of the University of California et al.**

The portion of the judgment granting Hunt's petition for a writ of mandate is reversed. The judgment of the trial court is affirmed in all other respects. The University shall recover its costs on appeal. Pollak, Acting P.J. We Concur: Siggins, J., Horner, J.\* (Not for Publication.)

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\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Monday, October 29, 2007 (continued)

Division Four

**A117094 – The People v. Malcolm Likolo Haney, Sr.**

The judgment is affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

**A116606 – In re Lelia C., a Person Coming Under the Juvenile Court Law. Humboldt County Department of Health and Human Services v. Dan C., et al.**

We reverse the judgment terminating parental rights with a limited remand to the juvenile court with directions and guidance as set forth in part II.A.3., above. Following remand, should the order terminating parental rights be reinstated, the affirmance of decisions and findings challenged in part II.B. and C. will survive the remand. Reardon, Acting P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

**A112197 – The People v. Lorenzo Stevens.**

The judgment is affirmed. Reardon, J. I Concur: Sepulveda, J. (See dissenting opinion by Ruvo, P.J.) (Certified for Publication.)

Division Five

**A114563 – The People v. Ava Zinlu.**

The judgment is affirmed. Needham, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

**A111391 – Bette Clark v. Westrec Marina Management, Inc.**

The order granting Westrec's motion for JNOV and the judgment entered in favor of Westrec are reversed. The order granting Westrec's motion a new trial is affirmed and the case is remanded for further proceedings. The parties shall bear their own costs on appeal. Needham, J. We Concur: Simons, Acting P.J., Gemello, J. (Not for Publication.)

Tuesday, October 30, 2007

Division One

**A113901/A114413/A116162 – Jason Heilig v. Touchstone Climbing, Inc.**

The summary judgment in favor of respondent is affirmed. The award of attorney fees to respondent is affirmed. The denial of an award of attorney fees to appellant is affirmed. The parties are to bear their own costs on appeal. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Division Two

**A115948 – In re J.C., a Person Coming Under the Juvenile Court Law. The People v. J.C.**

The juvenile court's order is affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

**A116425 – Rita L. Parnala v. Plycon Transportation Group, Inc.**

The order appealed from is affirmed. Haerle, Acting P.J. We Concur: Lambden, J., Richman, J. (Not for Publication.)

Division Three

**A113381 – The People v. John Wilbur.**

The sentence is vacated and the case is remanded for resentencing in accordance with the requirements of *Cunningham, supra*, 549 U.S. \_\_ [127 S.Ct. 856] and *Sandoval, supra*, 41 Cal.4th at page 825. The judgment is otherwise affirmed. Siggins, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

**A115168 – Jenna Lim v. Hyun Koo Kim.**

The judgment is affirmed. Appellant shall bear costs on appeal. Horner, J.\* We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

**A116299 – Gene Chan et al. v. United Screeners Association Local One et al.**

The ruling is affirmed. Siggins, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

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Tuesday, October 30, 2007 (continued)

Division Three

**A115472 – J.R. Marketing, L.L.C. et al. v. Hartford Casualty Insurance Company.**

The order denying disqualification is affirmed. Appellants shall bear the costs on this appeal. Horner. J.\* We Concur: Pollak, Acting P.J., Siggins, J. (Not for Publication.)

**A113837 – The People v. Shakeyma Yvette Brooks.**

The judgment is affirmed. Siggins, J. We Concur: McGuiness, P.J., Horner. J.\* (Not for Publication.)

Division Four

**A115937 – The People v. Douglas Otto Schnee.**

The judgment is affirmed. Sepulveda, J. We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

Division Five

**A116000 – In re James C., a Person Coming Under the Juvenile Court Law. The People v. James C.**

The case is remanded to the juvenile court for a calculation of predisposition custody credits. The judgment is otherwise affirmed. Needham, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

**A114149 – The People v. Brian Thomas McMahon.**

The judgment is affirmed. Jones, P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

**A116053 – In re Steven M., a Person Coming Under the Juvenile Court Law. The People v. Steven M.**

The judgment is affirmed. Simons, Acting P.J. We Confirm: Gemello, J., Needham, J. (Not for Publication.)

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**MINUTES**  
COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FIVE

Tuesday, October 30, 2007

Court convened at 9:00 a.m. at Westmoor High School, 131 Westmoor Avenue, Daly City, CA 94015.  
Present: Jones, P.J., Simons, J., Gemello, J., Needham, Jr., J., and E. Cyman, Deputy Clerk.

A116578     The People,

              v.

              Hua.

              Cause called and argued by Gordon Stewart Brownell, counsel for appellant, and by Ronald Niver, counsel for respondent. Cause ordered submitted.

A115132     Sigman et al.,

              v.

              Mariano.

              Cause called and argued by Jacques Bernard Leboeuf, counsel for appellants. Cause ordered submitted.

Court adjourned at 10:17 a.m.

Wednesday, October 31, 2007

Division One

**A114162 – The People v. Lamont Patterson.**

The judgment is modified to stay the two-year sentence on count 3 pending finality of the judgment and service of the sentence for count 2, such stay to become permanent upon the completion of the sentence for count 2. The trial court is ordered to prepare an amended abstract of judgment to reflect this modification and to forward the amended abstract to the Department of Corrections. As so modified, the judgment is affirmed. Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

**A116535 – The People v. Stanley Williams.**

We affirm the judgment and remand the matter for correction of the December 12, 2006 minute order, minutes, and commitment order to conform to the court's oral pronouncement of judgment that defendant's participation in the Roads to Recovery program is voluntary rather than mandatory. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

**A117072 – Riyaz Ali v. Ray Robinson.**

The order dismissing the complaint is affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

Division Two

**A113765 – The People v. James Quincy Hill.**

For the foregoing reasons, the judgment is affirmed. Kline, P.J. We Concur: Lambden, J., Richman, J. (Not for Publication.)

**A114290/A115401 – Charlotte Laughton v. International Alliance of Theatrical Stage Employees, Local 16.**

The judgment is reversed and remanded with directions to modify it by providing that Local 16's right to recover attorney fees and costs as the prevailing party in this case does not include costs incurred in connection with the appeal in *International Alliance*, *supra*, 118 Cal.App.4th 1380. Except as modified, the judgment is affirmed. The post-judgment attorney fee award is also affirmed. The parties shall bear their own costs on appeal. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Wednesday, October 31, 2007 (continued)

Division Two

**A113633 – The People v. Deontae Lapoleon Jacobs.**

Our Supreme Court has held that “trial court discretion is not unlimited. ‘The discretion of a trial judge . . . is subject to the legal principles governing the subject of its action, and to reversal on appeal where no reasonable basis for the action is shown. [Citation.]’ ” (*Westside Community for Independent Living, Inc. v. Obledo, supra*, 33 Cal.3d at p. 355.) We hold that the decision by Judge Kroyer to proceed with the sentence in the circumstances here was not “in conformity with the spirit of the law,” and could be said to “defeat the ends of substantial justice.” (*Bailey v. Taaffe, supra*, 29 Cal. 422, 424.) Such decision cannot stand, and the matter is remanded for sentencing by Judge Champlin. Richman, J. We Concur: Kline, P.J., Lambden, J. (Certified for Publication.)

**A113335 – John J. Prehn et al. v. Bruce Michaud, et al.**

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Three

**A117800 – The People v. Carl Ernest Duval.**

The judgment is affirmed. Pollak, J. We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

**A115681 – In re Mario L., a Person Coming Under the Juvenile Court Law. Contra Costa County Children & Family Services Bureau v. Martha P. et al.**

The juvenile court’s orders terminating appellants’ parental rights with respect to Mario L., and denying their section 388 modification requests, are affirmed. Horner, J.\* We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

**A115415 – The People v. Michael D. Harris.**

The judgment is affirmed. Horner, J.\* We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

**A117616 – Glenn Brooks v. Marty Frates.**

The order of the trial court denying the request for attorney fees is affirmed. Siggins, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

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Wednesday, October 31, 2007 (continued)

Division Three

**A113460 – Michael Muessig v. City of Eureka et al.**

The judgment is affirmed. Muessig shall bear costs on appeal. McGuiness, P.J.  
We Concur: Siggins, J., Horner, J.\* (Not for Publication.)

**A117634 – The People v. Marshon Larin Ardoin.**

The judgment is affirmed. McGuiness, P.J. We Concur: Pollak, J., Siggins, J. (Not for Publication.)

**A116542 – In re Billy B., a Person Coming Under the Juvenile Court Law.  
The People v. Billy B.**

The sustained allegation in count 10 for receiving stolen property (§ 496, subd. (a) [gold teeth] is reversed. In all other respects, the judgment is affirmed. McGuiness, P.J.  
We concur: Siggins, J., Horner, J.\* (Not for Publication.)

**A114494 – The People v. Barron Von Diltz.**

The judgment is affirmed. Siggins, J. We Concur: McGuiness, P.J., Horner, J.\*  
(Not for Publication.)

**A115106 – The People v. Kenneth Wayne Guy.**

The judgment is affirmed. Horner, J.\* We Concur: McGuiness, P.J., Pollak, J.  
(Not for Publication.)

Division Four

**A112499 – Ann Moriarty v. Mt. Diablo Health Care District.**

The trial court's denial of Moriarty's petition for writ of a peremptory writ of mandamus is affirmed. Both parties are to bear their own costs on appeal. Ruvolo, P.J.  
We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

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Wednesday, October 31, 2007 (continued)

Division Five

**A116903 – In re Anna L., a Person Coming Under the Juvenile Court Law.  
Marin County Health & Human Services v. Patricia S. et al.**

The order terminating parental rights is affirmed. Jones, P.J. We Concur:  
Gemello, J., Needham, J. (Not for Publication.)

**A113399 – Fred H. Williams v. SnSands Corporation.**

The judgment is reversed. Parties to bear their own costs. Jones, P.J. We Concur:  
Simons, J., Needham, J. (Certified for Publication.)